IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12902 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRNAGAR DISTRICT PANCHAYAT & 1 - Petitioner(s)
Versus
LAVJIBHAI BUDHARBHAI C/O HIMMATSINH CHAUHAN - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR NM SHAH for MRS DT SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

Shri H.S. Munshaw, learned counsel for the petitioners; Shri N.M. Shah under the authority

of Mrs. D.T. Shah, learned counsel for the respondent.

2. The petitioner being aggrieved by the award dated 3.2.2000, passed by the Labour Court, Surendranagar in Reference [LCN] 167/93 directing reinstatement of the respondent-workman with 20% back wages from 1.1.93 till publication of the award, is before this Court under Article 227 of the Constitution of India.

3. It is not in dispute before me that the workman had worked for almost about seven years with the present petitioner; he came to the Labour Court with a submission that he had worked for 240 days in 12 calendar months preceding the date of illegal retrenchment; he had worked with the present petitioner-employer for almost about seven years and, without following any legal provisions, he was illegally retrenched. The present petitioner appeared before the learned Labour Court and submitted in its defence that the respondent was not terminated by them but in fact, he abandoned the work. The learned Labour Court, after appreciating the evidence, held

that the respondent workman had worked with the present petitioner for more than seven years, he had worked for 240 or more days in 12 calendar months preceding the date of retrenchment and that he did not abandon the work but in fact, he was removed from the services.

4. Shri Munshaw, learned counsel for the petitioner submits that in case workman was removed from the services, he should have gone back to the Master with a complaint or, should have sent him some notice that he has been illegally removed and as this has not been done by the workman, adverse inference should have been drawn against the interest of the workman.

5. In a case, where an employee is removed from the services, under no law, it would be necessary for him to go back to the Master telling him that removal of the workman was illegal. If the Master takes law in his own hands, it would be too much for him to expect that a person who was dealt with illegally would come back to the Master with demand of justice. In the present matter, according to the respondent workman, he

was removed from the services on 28.2.93 and within a short while Reference came to be made. This conduct of the respondent would show that he was aggrieved by his removal and he in fact, did not abandon the services. So far as the work and the period of the work is concerned, the respondent had clearly proved that he had worked for more than seven years or more; the fact has not been denied by the present petitioner. In case like present where workman comes out with a case that he has worked for almost about seven years and the employer does not produce the complete records, any Court would be entitled to draw adverse inference against the interest of the employer.

6. The Court below was not unjustified in holding that the respondent acquired the status of a workman and that he was illegally removed.

7. So far as the back wages are concerned, the Court below has awarded only 20% of the back wages which, in the opinion of this Court, cannot be said to be on the higher side.

8. I find no reason to interfere. The petition

deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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